

1 LAURENCE F. PULGRAM (CSB NO. 115163)  
*lpulgram@fenwick.com*  
2 LIWEN A. MAH (CSB NO. 239033)  
*lmah@fenwick.com*  
3 FENWICK & WEST LLP  
555 California Street, 12th Floor  
4 San Francisco, CA 94104  
Telephone: (415) 875-2300  
5 Facsimile: (415) 281-1350

6 PATRICK E. PREMO (CSB NO. 184915)  
*ppremo@fenwick.com*  
7 HENRY Z. CARBAJAL III (CSB No. 237951)  
*hcarbajal@fenwick.com*  
8 DENNIS M. FAIGAL (CSB NO. 252829)  
*dfaigal@fenwick.com*  
9 FENWICK & WEST LLP  
Silicon Valley Center  
10 801 California Street  
Mountain View, CA 94041  
11 Telephone: (650) 988-8500  
Facsimile: (650) 938-5200  
12 Attorneys for Plaintiff  
13 SUCCESSFACTORS, INC.

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 OAKLAND DIVISION  
17

18 SUCCESSFACTORS, INC., a Delaware  
corporation,

19 Plaintiff,

20 v.

21 SOFTSCAPE, INC., a Delaware  
22 corporation; and DOES 1-10, inclusive,

23 Defendants.  
24  
25  
26  
27  
28

Case No. CV 08 1376 CW (BZ)

**DECLARATION OF PATRICK PREMO IN  
SUPPORT OF PROPOSED ORDER TO SEAL  
PORTIONS OF DEFENDANT'S EXHIBITS  
TO THE DECLARATION OF JEFFREY M.  
RATINOFF IN SUPPORT OF DEFENDANT'S  
OPPOSITION TO PLAINTIFF'S MOTION TO  
COMPEL**

1 I, Patrick Premo, declare as follows:

2 1. I am a partner with the law firm of Fenwick & West LLP, counsel of record for  
3 Plaintiff SuccessFactors, Inc. ("SuccessFactors"). I make this declaration based on my personal  
4 knowledge, except where otherwise indicated, and if I am called as a witness, I would and could  
5 testify competently to the matters contained herein. I have represented SuccessFactors since the  
6 initiation of this litigation in early March 2008. I also represent SuccessFactors in a number of  
7 other litigations and am familiar with their business practices and procedures.

8 2. On August 13, 2008, Jeffrey M. Ratinoff, counsel for Defendant Softscape, Inc.  
9 ("Softscape"), filed with the Court a Declaration in Support of Defendant's Opposition to  
10 Plaintiff's Motion to Compel (the "Ratinoff Declaration"). It included nine exhibits, Exhibits A  
11 through N.

12 3. Among the information redacted by Softscape from its Exhibits is information that  
13 I and my colleagues have designated on behalf of SuccessFactors as Highly Confidential under  
14 the Protective Order. SuccessFactors seeks an administrative order to file under seal the  
15 following three narrow categories of information: (1) customer retention information; (2) pricing;  
16 and (3) the identity of potential or lost SuccessFactors' customers and prospects as a result of  
17 Softscape's unfair business conduct, which includes certain confidential communications between  
18 SuccessFactors and these customers and prospects and deposition testimony about lost sales. We  
19 have not included blanket confidentiality designations. Instead we have selected narrowly  
20 redacted information, for example just the names of the specific customer or prospect, as a means  
21 of narrowly tailoring our request.

22 4. SuccessFactors is not seeking an order to file under seal any other information that  
23 may have been proffered by Defendant in its opposition papers, other than what is identified here.

24 5. Exhibit A to the Ratinoff Declaration consists of SuccessFactors' Response to  
25 Defendant's First Set of Interrogatories ("Exhibit A"). Limited portions of the interrogatory  
26 response were highlighted in yellow and designated as "Attorney's Eyes Only," while the  
27 remainder carried no confidentiality designation.

28 6. The first category of redacted information in the interrogatory answer is customer  
PREMO DECL. ISO PROPOSED ORDER TO  
SEAL PORTIONS OF EXHIBITS TO RATINOFF  
DECL. ISO DEF'S. OPP. TO PLF'S MTC

1 retention. It includes the following passages from Exhibit A: page 4, lines 7-9, 15 and 19.  
 2 SuccessFactors has designated this information as highly confidential because it includes non-  
 3 public, confidential information tracked by SuccessFactors' sales, marketing and executive teams.  
 4 SuccessFactors does not provide the kind of detailed retention information that has been  
 5 requested and disclosed as part of the discovery process. This is competitively sensitive  
 6 information that could be used to the detriment of SuccessFactors. Customer retention  
 7 information is the focus of Softscape's "Naked Truth" PowerPoint Presentation. Softscape has  
 8 issued a press release on its own customer retention rates on March 10, 2008 – six days after  
 9 Softscape's "Naked Truth" Presentation was distributed over the internet attacking  
 10 SuccessFactors' retention rates. I am informed and believe, that Softscape uses information about  
 11 customer retention rates as a basis to differentiate itself from its competition, including  
 12 SuccessFactors, and help close new sales.

13 7. The second category of information (Exhibit A: page 8, lines 1-3) relates to  
 14 confidential pricing, more specifically information about the method of pricing on  
 15 implementation projects and the average length of time on implementation projects. I am  
 16 informed that SuccessFactors does not publicly disclose this information, but rather discloses to  
 17 customers or prospects under an NDA. Pricing information would be competitively sensitive and  
 18 could assist a competitor in outbidding its competition.

19 8. The third category in the interrogatory response, identities of customers and  
 20 prospects and communications with them, usually concern the Presentation. The limited  
 21 redactions are in the following passages of Exhibit A:

- 22 • Page 6, lines 7-8 and 17-18;
- 23 • Page 12, line 25;
- 24 • Page 14, lines 21-23;
- 25 • Page 15, lines 2-14;
- 26 • Page 21, lines 20-23
- 27 • Page 23, lines 11-14;
- 28 • Page 31, lines 10-14.

1 SuccessFactors has designated this information as highly confidential because the information  
2 reveals specific names of SuccessFactors' customers and prospects and confidential  
3 communications usually asking about the Presentation.

4 9. If public, Softscape would be free to exploit this information. Its sales team could  
5 discover the names of the specific persons within the organization that have voiced concerns and  
6 target sales efforts to these people based on concerns revealed in these confidential  
7 communications. Competitors could exploit current customers' reactions, which are included in  
8 the passages identified above, to sell against SuccessFactors.

9 10. The Court has granted relief to file similar information under seal in the order  
10 issued by this Court on March 24, 2008. *See* Order Granting Motion for Administrative Relief to  
11 File Under Seal Plaintiff's Exhibits to the Declarations of Rob Bernshteyn and Jorge Corrales in  
12 Support of Plaintiff's Motion for Preliminary Injunction and Expedited Discovery (Dkt. No. 49);  
13 *see also* Confidential Exhibit 1 to the Declaration of Rob Bernshteyn in Support of Preliminary  
14 Injunction and Expedited Discovery (Dkt. No. 39, Ex. A).

15 11. In addition, Exhibit B to the Ratinoff Declaration ("Exhibit B") is a section of the  
16 transcript of the Rule 30(b)(6) deposition of SuccessFactors. We have designated on behalf of  
17 SuccessFactors the portions of the deposition transcript that identify or lead to the identification  
18 of SuccessFactors' customers and prospects as highly confidential. In an effort to narrowly tailor  
19 SuccessFactors' request for an order to seal certain information, Plaintiff seeks only to put the  
20 specific names of customers and prospects under seal as follows (page numbers identified are the  
21 original transcript page numbers as shown in the Exhibit):

- 22 • Page 89, line 21;
- 23 • Page 90, lines 10, 15, and 19;
- 24 • Page 91, lines 2 and 14;
- 25 • Page 95, lines 2, 3, 7, 9, and 11;
- 26 • Page 96, lines 1-2, and 7;
- 27 • Page 97, lines 2, 10, 16, and 24;
- 28 • Page 98, lines 2, 6, 7, and 11-23;

- Page 99, lines 1-20;
- Page 100, line 5, 18, and 21-25;
- Page 101, lines 1-6, 10, 15, 20, and 23;
- Page 105, lines 2-3, and 20-25;
- Page 106, lines 2 through page 108, line 24;
- Page 111, lines 4-17, and line 21;
- Page 115, lines 6-24;
- Page 117, lines 1, 4-11, and 23;
- Page 118, lines 7-25;
- Page 121, line 9 through page 122, line 21;
- Page 122, lines 23-25;
- Page 123, lines 1-2, lines 9-16, 18, 20-25;
- Page 124, lines 1 and 13-19;
- Page 125, lines 2 through page 127, line 1;
- Page 127, line 8 through page 128, line 10;
- Page 128, lines 21 through page 129, line 22;
- Page 134, lines 7, 12, 16, 23, and 25;
- Page 135, lines 5-10, 17-25; and
- Page 136, line 6.

12. The portions identified above relate to detailed questioning and testimony by a key SuccessFactors' witness about potential and actual lost sales caused by the widespread distribution of Softscape's PowerPoint Presentation. It would harm SuccessFactors and unfairly benefit its competitors, including Softscape, to have information about potential and actual lost sales made because competitors could target their sales efforts to these vulnerable accounts.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed this 20th day of August 2008 at Mountain View, California.

**/s/ Patrick E. Premo**

Patrick E. Premo

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
MOUNTAIN VIEW

LAURENCE F. PULGRAM (CSB NO. 115163)  
*lpulgram@fenwick.com*  
LIWEN A. MAH (CSB NO. 239033)  
*lmah@fenwick.com*  
FENWICK & WEST LLP  
555 California Street, 12th Floor  
San Francisco, CA 94104  
Telephone: (415) 875-2300  
Facsimile: (415) 281-1350

PATRICK E. PREMO (CSB NO. 184915)  
*ppremo@fenwick.com*  
HENRY Z. CARBAJAL III (CSB No. 237951)  
*hcarbajal@fenwick.com*  
DENNIS M. FAIGAL (CSB NO. 252829)  
*dfaigal@fenwick.com*  
FENWICK & WEST LLP  
Silicon Valley Center  
801 California Street  
Mountain View, CA 94041  
Telephone: (650) 988-8500  
Facsimile: (650) 938-5200  
Attorneys for Plaintiff  
SUCCESSFACTORS, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

SUCCESSFACTORS, INC., a Delaware corporation,

Plaintiff,

v.

SOFTSCAPE, INC., a Delaware corporation; and DOES 1-10, inclusive,

Defendants.

Case No. CV 08 1376 CW (BZ)

**[PROPOSED] ORDER TO SEAL PORTIONS OF  
DEFENDANT'S EXHIBITS TO THE DECLARATION OF  
JEFFREY M. RATINOFF IN SUPPORT OF  
DEFENDANT'S OPPOSITION TO PLAINTIFF'S  
MOTION TO COMPEL**

For good cause showing, IT IS HEREBY ORDERED THAT:

The following portions that (1) identify or lead to the identity of Plaintiff SuccessFactors, Inc.'s ("SuccessFactors") customers and prospective customers, (2) identify SuccessFactors' pricing, and (3) include information concerning the retention of such customers are HEREBY

1 SEALED:

- 2 • Excerpts from Exhibit A to the Declaration of Jeffrey M. Ratinoff in Support of
- 3 Defendant's Opposition to Plaintiff's Motion to Compel: lines 7-9, 15, and 19 on
- 4 page 4; lines 7-8 and 17-18 on page 6; line 23 of page 7; lines 1-3 on page 8; line
- 5 25 on page 12; lines 21-23 on page 14; lines 2-14 on page 15; lines 20-23 on page
- 6 21; and lines 10-14 on page 31.
- 7 • Excerpts from Exhibit B to the Declaration of Jeffrey M. Ratinoff in Support of
- 8 Defendant's Opposition to Plaintiff's Motion to Compel (page numbers identified
- 9 are the original transcript page numbers as shown in the Exhibit): line 21 on page
- 10 89; lines 10, 15, and 19 on page 90; lines 2 and 14 on page 91; lines 2, 3, 7, 9, and
- 11 11 on page 95; lines 1-2, and 7 on page 96; lines 2, 10, 16, and 24 on page 97;
- 12 lines 2, 6, 7, 11-23 on page 98; lines 1-20 on page 99; lines 5, 18, and 21-25 on
- 13 page 100; lines 1-6, 10, 15, 20, and 23 on page 101; lines 2-3 and 20-25 on page
- 14 105; line 2 on page 106 through line 24 on page 108; lines 4-17 and 21 on page
- 15 111; lines 6-24 on page 115; lines 1, 4-11, and 23 on page 117; lines 7-25 on page
- 16 118; line 9 through on page 121 through line 21 on page 122; lines 23-25 on page
- 17 122; lines 1-2, lines 9-16, 18, and 20-25 on page 123; lines 1 and 13-19 on page
- 18 124; line 2 on page 125 through line 1 on page 127; line 8 on page 127 through
- 19 line 10 on page 128; line 21 on page 128 through line 22 on page 129; lines 7, 12,
- 20 16, 23, and 25 on page 134; lines 5-10, 17-25 on page 135; and line 6 on page 136.

21 IT IS SO ORDERED.

22  
23 Dated: \_\_\_\_\_, 2008

\_\_\_\_\_  
The Honorable Bernard Zimmerman  
United States Magistrate Judge